

Statement of
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On
Immigration Problems of US Military Members, Veterans, & Their Families
Before the
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Immigration, Citizenship, Refugees, Border Security, & International Law
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Madam Chairwoman and distinguished Members of the Committee, my name is Margaret Stock. I am honored to be here in my capacity as an expert in the field of immigration and citizenship law and to discuss its effect on military members, veterans, and their families.

I am an attorney admitted to the bar in the State of Alaska, where I have practiced primarily in the area of immigration and citizenship law for nearly fifteen years. I have also been a member of the Army Reserve for more than twenty-six years; currently, in my capacity as a Lieutenant Colonel in the Military Police Corps, US Army Reserve, I am assigned as an Associate Professor (Drilling Individual Mobilization Augmentee) in the Department of Social Sciences at the United States Military Academy at West Point, New York. As an attorney in private practice and as an employee of the Department of

the Army, I have assisted numerous military members and their families with US immigration matters. The statements, opinions, and views I express today are my own, however, and do not represent the views of the United States Military Academy, the Department of the Army, the Department of Defense, or any other government agency.

For the past several months, I have been volunteering with the American Immigration Lawyers Association Military Assistance Program, a new collaborative effort between the American Immigration Lawyers Association (AILA) and the Legal Assistance Offices of the United States military Judge Advocate General Corps. The military Legal Assistance Offices provide free assistance to military members and their families, including active duty, reserve component, and retired military personnel in order to maintain the highest level of readiness possible in the event a military member is deployed. Recently, JAG attorneys have been inundated with complex immigration legal questions. To resolve these cases successfully, they often need the assistance and experience of seasoned immigration attorneys. AILA MAP has brought these two groups together for the first time in a dynamic partnership. As a volunteer with AILA MAP, I have been able to see the wide range of immigration problems that US military members, veterans, and their families face today.

Thus, I am honored to be appearing before you today to discuss the immigration law problems faced by members of the US military and their families. These problems are numerous and result from the fact that Congress and the Executive Branch have created an extremely complex and often arbitrary system of immigration laws and

regulations without full attention to the detrimental impact that this system has on the readiness of the US Armed Forces. The United States is a global power and members of its military are deployed in more than a hundred countries around the world. And while our Armed Forces are engaged in fighting a Global War on Terrorism, with an enemy who speaks many languages, travels internationally, and fights our forces here at home and across the globe, America's immigration laws often detract from the military's ability to fight that war. Currently, many military members fighting overseas find that they must also fight their own government at home, as that government creates bureaucratic obstacles that impede military readiness by preventing family members from accessing immigration benefits, refuses to allow family members into the United States altogether, or even seeks to deport military personnel or their family members.

It is important to emphasize—as Members of this Committee know very well—that the current state of immigration law is dysfunctional and irrational, and only promises to get worse. The most apt description of the state of our immigration laws comes from former INS spokesperson Karen Kraushaar, who said that US “immigration law is a mystery and a mastery of obfuscation.” As military members encounter these laws and this system, they often experience the same difficulties and frustrations that civilians experience. They must deal with a complex system that requires years of study to understand—a system that makes it nearly impossible for many people to immigrate to the United States legally unless they can find, and have the funds to hire, one of the rare attorneys who knows how to navigate the system successfully. And these military

members face the added burden that they must cope with these complexities at the same time that they are coping with added stresses necessitated by today's military lifestyle.

Congress has done much in recent years to try to help non-citizen military members become citizens more quickly, and the process for expediting military naturalization cases has improved greatly in the past few years. I applaud this effort, which has been highly beneficial to the US Armed Forces in obtaining and retaining qualified enlisted personnel and officers. Congress also made some recent changes to the law so that family members sent overseas will not lose their US residency or eligibility to naturalize simply because they have spent time overseas with their military spouse or parent. But much more must be done. Let me give you some examples of immigration problems that still exist, and that are hurting military readiness:

First, active duty military personnel are still being placed into removal proceedings and forced to hire private attorneys, seek assistance from AILA MAP, or represent themselves. The Department of Homeland Security is represented by qualified attorneys when it moves to deport aliens, but it does not provide defense attorneys to aliens (or even United States citizens) who are placed into proceedings, even if those individuals are active duty military members. DHS has a policy—laid out in a document called the “Forman memo”¹—that its officers are not supposed to try to deport active duty military personnel without checking with their headquarters. Lately, however, DHS

¹ Marcy M. Forman, Acting Director, Office of Investigations, Immigration & Customs Enforcement, Memorandum, Issuance of Notices to Appear, Administrative Orders of Removal, or Reinstatement of A Final Removal Order on Aliens with United States Military Service, June 21, 2004, available at <http://www.bibdaily.com/pdfs/Forman%206-21-04.pdf>.

officers have been ignoring the policy. Active duty military personnel have been placed into proceedings—or threatened with being placed into proceedings—for technical violations of immigration law. To give one example, Navy sailor Karla Rivera was recently placed into removal proceedings because she failed to file Form I-751 to lift the conditions on her permanent residence—despite the fact that she is eligible for a waiver of the timely filing of the form, and despite having a pending citizenship application. It is unlikely that the United States Government will ever deport Karla—or that there would be any rational reason to deport Karla—but this sailor has had to attend removal proceedings on the other side of the country, at her own expense, despite having a pending citizenship application that will likely be approved. Not only is Karla’s time being wasted with this exercise, but the US taxpayers are paying for the time of immigration judges and DHS attorneys so that Karla can be forced to engage in a Kafkaesque dance with the immigration bureaucracy. And she must take time away from her Navy job to do so.

Another problem that military members face is their inability to obtain permanent legal status for their family members in a timely manner. This is a problem that does not just affect military personnel whose family members have violated immigration law—it affects perfectly legal people as well. Slow government processing times, complex filing procedures, and huge fees can often mean that family members awaiting their lawful residency cannot obtain Employment Authorization Documents, Social Security numbers, or driver’s licenses for months or sometimes years. Military personnel deployed overseas often have spouses and children back home in the United States who cannot

work or drive legally—and military bases are often very large places in isolated areas where mass transit is not readily available. Military units are forced to provide transportation and other support to these family members because the Department of Homeland Security takes so long to approve their applications for the basic legal documents that they need to survive on their own in today's America.

Even when military families are able to file applications for immigration benefits, they often run afoul of our complex laws through no fault of their own. Because of military requirements, they move frequently, so that DHS notices do not reach them timely. The military will order them to go overseas while their applications are pending, and they often thereby lose eligibility for the benefit they seek. When these things happen, DHS will deny their applications or even put them into removal proceedings, forcing them again to incur significant time and expense to resolve the problem. They also live on military bases that are often very far away from the DHS offices with which they must file their applications. Many military family members must travel more than 100 miles just to have their fingerprints taken for immigration benefits. They are also required to take medical exams with DHS-designated civil surgeons because DHS does not recognize most military doctors as being qualified to provide these exams. Thus military members and their families are forced to pay large fees and travel to obtain the required exams.

Even worse are the problems faced by military personnel whose family members are out of compliance with immigration law. Due to the 1996 changes to the immigration

laws, many of these family members are unable to obtain legal status in the United States. In some cases, they have a legal status such as Temporary Protected Status, but are unable to obtain lawful permanent residence. In other cases, they must leave the United States to have any hope of obtaining an immigrant visa—but once they leave, they will trigger a bar that prevents their return. And finally, there are those who are simply barred from permanent residence altogether due to harsh provisions of the immigration laws that provide no waivers for even very minor transgressions. In a country that professes to value the ideals of family unity, forgiveness, and rehabilitation, it is hard to explain why past minor violations of immigration law can never be forgiven, but lead to permanent banishment from the United States and force the break-up of many families, both military and civilian. These laws have a particularly harsh effect on military families, forcing military members to make a choice between abandoning their families, or leaving the United States military altogether.

The plight of U.S. military family members with these types of immigration problems is no better illustrated than by reference to the well-publicized case of Yaderlin Hiraldo and Alex Jimenez. Yaderlin's situation came to national media attention in mid-2007, when her husband, Specialist Alex Jimenez of the United States Army, was reported Missing In Action (MIA) after his squad was ambushed in Iraq.² Prior to his disappearance, Alex had filed papers seeking to obtain lawful permanent residence status

² Marcus Baram & David Schoetz, *A Military Wife's Rock and Hard Place: Husband Missing in Iraq; Wife Facing Potential Deportation at Home*, ABC News, June 20, 2007, <http://abcnews.go.com/TheLaw/story?id=3297537>.

for his wife.³ Unfortunately for Alex, Department of Homeland Security (DHS) officials decided that Yaderlin was not eligible for lawful permanent residence (LPR) status because she had entered the United States in an irregular manner.⁴ She was placed into removal proceedings, and for several years the Department of Homeland Security tried to deport her. She was in removal proceedings when her husband was reported missing, and had been told to leave the US and seek a visa overseas; and yet without his presence and support, she could not hope to obtain permission to return to the United States, and would be barred for ten years from returning to the United States.⁵ But the Department of Homeland Security stood firm; she was not to be granted any special grace due to her status as the spouse of a deployed soldier.

And yet when Senator John Kerry wrote a letter to Secretary of Homeland Security Michael Chertoff, and major news media began highlighting Yaderlin's predicament,⁶ Secretary Chertoff suddenly exercised his authority to grant "discretionary parole" to Yaderlin.⁷ Once she had been granted parole, Yaderlin was immediately eligible to adjust her status, despite her unlawful entry. Within a matter of days, USCIS

³ Marcus Baram & David Schoetz, *A Military Wife's Rock and Hard Place: Husband Missing in Iraq; Wife Facing Potential Deportation at Home*, ABC News, June 20, 2007, <http://abcnews.go.com/TheLaw/story?id=3297537>.

⁴ Marcus Baram & David Schoetz, *A Military Wife's Rock and Hard Place: Husband Missing in Iraq; Wife Facing Potential Deportation at Home*, ABC News, June 20, 2007, <http://abcnews.go.com/TheLaw/story?id=3297537>.

⁵ Associated Press, *Wife of Mass. Soldier missing in Iraq faces deportation, attorney says*, June 21, 2007.

⁶ See Greg Simmons, *Feds Say Missing Soldier's Illegal Immigrant Wife Not Likely To Be Deported*, Fox News, June 20, 2007, <http://www.foxnews.com/story/0,2933,284832,00.html>.

⁷ Chertoff Agrees to Kerry's Request to Protect Wife of Missing Soldier, June 21, 2007, available at <http://kerry.senate.gov/cfm/record.cfm?id=277541> (containing text of letter from DHS Secretary Chertoff to Senator John Kerry of Massachusetts, describing how Secretary Chertoff had directed that "ICE will grant Ms. Hiraldo discretionary parole into the United States").

granted her application to adjust status, and she was given a “green card.”⁸ The story would have had a happy ending but for the continued status of Alex Jimenez, who remains MIA as of this writing.⁹

Other military families remain in the same predicament. Yaderlin’s case was resolved successfully, but their cases have not; although DHS has a parole policy for Cubans who enter the United States unlawfully, it has no such policy for US military family members. An example is Army Sergeant Yolanda Guevara, a top-notch soldier whose husband is from El Salvador and has Temporary Protected Status. The couple have three children who were all born in the United States. Sergeant Guevara tried to obtain legal status for her husband; she filed all the required papers and paid the required fees, only to be told that her husband was not eligible for a green card and would have to go back to El Salvador for ten years when his Temporary Protected Status expires next year. Under current law, Sergeant Guevara’s husband is unable to obtain permanent status, and she fears that he may be deported during her next deployment, leaving her children without a parent. Secretary Chertoff could order that Sergeant Guevara’s husband receive discretionary parole so that he could be eligible for a green card, but as of today, he has not. Furthermore, no system can operate successfully and fairly if it depends on the personal intervention of the Secretary of Homeland Security.

⁸ Associated Press, *Illegal Immigrant Wife of Missing Soldier Awarded Green Card to Stay in U.S.*, July 2, 2007.

⁹ Neil Graves & Douglas Montero, *New Hope for GI; Qaeda ‘Kidnap’ Busts*, N.Y. Post, December 28, 2007, at 27.

Hundreds of other US military families face similar dilemmas, with family members who cannot adjust status facing possible deportation at the hands of the same government that employs their military member relatives. Still others have foreign family members who have been denied entry to the United States because of minor immigration law violations, and are essentially trapped overseas with no hope of joining their US military family members in America. Ironically, this same government often lauds the families' contributions to military morale, praises their sacrifices, and provides them with military-related benefits—but will not permit them to obtain the legal status that would truly allow their loved ones to focus on service to their country.

Some of these problems might be resolved if the Department of Homeland Security would issue the same sort of policy memo with regard to military family members that it has issued for Cubans, but other problems cannot be solved without changes to the law. A very serious problem today is the fact that many military family members are completely barred from obtaining lawful permanent residence, and the law does not permit waivers. Some have entered the United States illegally and cannot adjust their status; some have worked unlawfully; many cannot leave the United States for fear of triggering a 3-year, 10-year, or permanent bar to their return. The current stepped-up enforcement efforts by the Department of Homeland Security have forced many military family members into exile in a foreign country. When this happens, the US military may eventually lose the US military member, who may not want to continue to serve in the United States military when his or her family has been banished to Mexico, the

Philippines, Kenya, or some other far away place. Without legal reform, these problems cannot be resolved.

A case in point is the plight of George Mayieka, an Army soldier who serves in the critical health care field. George's wife was told to leave the United States and go to a U.S. consulate abroad for her green card processing by the well-meaning but mistaken advice of a trained U.S. Government immigration attorney and a trained Immigration Judge. At the consulate, the consul—whose decision is final and not subject to judicial review in any U.S. court—determined that George's wife is not, under current law, eligible for a green card after all, nor for any waiver that would make her eligible. George's wife is now trapped in a conflict-ridden country in Africa while he worries constantly about her well-being, and agonizes about whether to see a hardship discharge from the Army so that he can live with her overseas. If George leaves the service, America's Army will lose yet another critical health care worker at a time when they are in short supply.

I mention this case as just one example—but America's grounds of exclusion and deportation—now inadmissibility and removability—have become so strict, so tight, and so unforgiving that few home-grown Americans could ever qualify for green cards. Those grounds need wholesale revision. In the meantime, as a stopgap, we should improve our system of executive branch waivers to allow families to stay together. Many families could benefit from such waivers, but a good starting point would be to allow

DHS to grant waivers to military families. This is not just a matter of fairness, but a matter of military readiness.

On January 28, 2008, in his State of the Union address, President George W. Bush emphasized the important contribution that military families make to America's national defense. "Our military families also sacrifice for America," President Bush said. "They endure sleepless nights and the daily struggle of providing for children while a loved one is serving far from home."¹⁰ It is time that we honor the sacrifices of non-citizen military families by fixing our broken immigration laws so that these families can enter and remain legally in the United States, where they provide critical support to our fighting men and women.

¹⁰ President George W. Bush, State of the Union Address (Jan. 28, 2008), *available at* <http://www.whitehouse.gov/news/releases/2008/01/20080128-13.html>.